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09/966,028	09/28/2001	Maurice Granger	1759.053	4669

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EXAMINER

DEXTER, CLARK F

ART UNIT	PAPER NUMBER
3724	

DATE MAILED: 01/15/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No. <b>09/966,028</b>	Applicant(s) <b>Granger</b>
Examiner <b>Clark F. Dexter</b>	Art Unit <b>3724</b>



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

1)  Responsive to communication(s) filed on Nov 1, 2002

2a)  This action is FINAL.      2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

### Disposition of Claims

4)  Claim(s) 1-15 is/are pending in the application.

4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-15 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are a)  accepted or b)  objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.

12)  The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

13)  Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)  All b)  Some\* c)  None of:

1.  Certified copies of the priority documents have been received.
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

14)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

a)  The translation of the foreign language provisional application has been received.

15)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____	6) <input type="checkbox"/> Other: _____

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### **DETAILED ACTION**

1. The amendments/responses filed July 5, 2002 and November 1, 2002 have been entered.

It is noted that in view of the new amendment practice under 37 CFR 1.121 which became mandatory for all amendments on March 1, 2001, and due to the limited amount of examining time per application, if the amendment contains changes to existing language that requires a marked-up version showing those changes, the Examiner is relying upon the marked-up version(s) for examination of the application. It is applicant's responsibility to ensure that the clean version(s) is (are) the same as the marked-up version(s). It is further noted that the clean version(s) is (are) considered to be the Official version(s).

#### ***Priority***

2. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

#### ***Abstract***

3. Applicant is reminded of the proper language and format for an abstract of the disclosure. The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used

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by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

4. The abstract of the disclosure is objected to because the use of "means" in line 2 is improper. Appropriate correction is required. See MPEP § 608.01(b).

### *Specification*

5. The disclosure is objected to because of the following informalities:

In the replacement paragraph for the paragraph bridging pages 3 and 4 of the amendment, lines 5 and 6, the recitation "means of transmission" is awkward and unclear as to what is being described, and it seems that "of" should be changed to --for-- or the like for clarity. ← ↘

On page 6, line 9, the recitation "means of transmission" is awkward and unclear as to what is being described, and it seems that "of" should be changed to --for-- or the like for clarity.

On page 8, lines 2-3, the recitation "the number of means of transmission" is unclear, and it is suggested to change "of" to --for-- or the like.

Appropriate correction is required.

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***Claim Rejections - 35 USC § 112, 1st paragraph***

6. Claims 1-15<sup>X</sup> are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

As best understood from the claims, the specification and drawings do not appear to provide sufficient support for the invention as claimed. Specifically, the specification and drawings do not provide support for a control and safety device (disclosed on page 6, line 1 as a shaft) that comprises a drum and a means of transmission as appears to be claimed.

***Claim Rejections - 35 USC § 112, 2nd paragraph***

7. Claims 1-15<sup>X</sup> are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, in general the claim is vague and indefinite as to what is being set forth as the claimed invention, particularly since the claim as defined in line 1 is directed to a “control and safety device” which is defined, according to page 6, lines 1-2 of the specification, as “consisting of a shaft (9)”, but the claim appears to positively set forth other features that are not part of the shaft; in line 6, “means of transmission” is vague and indefinite as to what is being set forth, and it is suggested to change “of” to --for-- or the like; in lines 8-9, the recitation “a dimension that

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exceeds the width of the groove (4b) on said drum (4)" is vague and indefinite since it appears to be positively defining the invention in terms of the drum which is not part of the claimed invention as best understood.

In claim 3, lines 3-4, the recitation "characterized in that the length(L1) substantially exceeds the width (L2)" renders the claim vague and indefinite since it appears to be positively defining the claimed invention in terms of the drum which is not part of the claimed invention as best understood.

***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1-3 and 7-11, as understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Fleischauer, pn 3,961,700.

Fleischauer discloses a control and safety device (e.g., 48a shown in Figure 3A) with every structural limitation as best understood from the claims including a shaft (e.g., 48a), a drum (e.g., 28a) and a means of transmission (e.g., 60a), wherein the shaft has a dolly axle (e.g., 66), and wherein the device is mounted in a housing (e.g., as shown in Figure 2).

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10. Claims 1, 2, 4, 5 and 7-15, as understood, are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Granger, pn 4,846,035.

***Claim Rejections - 35 USC § 102/103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 4-6, as understood, are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Fleischauer, pn 3,961,700.

Fleischauer discloses a control and safety device (e.g., 48a shown in Figure 3A) with every structural limitation as best understood from the claims including a dolly-axle shape forming a shoulder and limit stop.

In the alternative, if it is argued that Fleischauer does not disclose shoulders, the Examiner takes Official notice that such features, as best understood from the claims, are old and well known in the art for various known benefits including providing an effective interface between a drive belt and a shaft for maintaining the belt in position on the dolly axle portion of the shaft. Therefore, it would have been obvious to one having ordinary skill in the art to provide shoulders on the dolly axle of Fleischauer for the well known benefits including that described above.

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13. Claims 1-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Granger, pn 4,635,837 (hereafter Granger '837), in view of Fleischauer, pn 3,961,700.

Granger '837 discloses an apparatus with almost every structural limitation of the claimed invention as best understood from the claims including a shaft (e.g., 38) but lacks the shaft having a dolly axle. However, the Examiner takes Official notice that such a shaft configuration is old and well known in the art as evidenced by Fleischauer (e.g., 58 in Fig. 2, or 66 in Fig. 3A) and provides well known benefits including providing an effective interface between a drive belt and a shaft for maintaining the belt in position on the dolly axle portion of the shaft. A further known benefit of such a shaft configuration is that it provides a groove with arcuate rather than square surfaces which reduces undue wear on the belt. Therefore, it would have been obvious to one having ordinary skill in the art to provide a dolly axle on the shaft of Granger for the well known benefits including those described above.

***Response to Arguments***

14. Applicant's arguments filed July 5, 2002 have been fully considered but they are not persuasive.

In the third paragraph on page 8 of the amendment, applicant argues that the rejection under 35 USC 112, 1st paragraph is inappropriate, and that applicant submits that "the specification and drawings clearly describe 'a control and safety device' for a drum and a transmission means 'in such a way as to reasonably convey to one skilled in the art' the claimed

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invention.” Applicant further argues that “[T]he present invention is not limited to what is disclosed on line 1 of page 6.” The Examiner respectfully submits that applicant’s argument is not understood. The Examiner’s position is not that there is no support for “a control and safety device for a drum and a transmission means” as applicant appears to be arguing. Rather, the Examiner’s position is that there is no support in the original disclosure for a control and safety device that comprises a drum and a transmission means. The specification is quite clear about this. The control and safety device, which is described as “consisting of a shaft (9)” on line 1 of page 6, along with the drum 4 and the transmission means 10 are all components of the disclosed dispensing apparatus/machine. One suggestion to obviate this rejection would be to replace lines 1 and 2 with --A dispensing apparatus comprising a drum and a control and safety device, the control--, and in line 3 to delete “a drum and” or the like. The dependent claims should then be amended accordingly.

In the fourth paragraph on page 9 of the amendment, applicant argues that Fleischauer does not anticipate the claimed invention because “the machine disclosed by Fleischauer is clearly not ‘a machine for dispensing strips’ as recited in claim 1 and disclosed in the present application.” The Examiner respectfully submits that applicant’s argument is not understood. It appears that applicant is relying on a functional recitation of intended use (i.e., for dispensing strips) to patentably distinguish the claimed invention over the prior art. As applicant is well aware, it is well settled case law that a functional recitation of intended use cannot be relied upon to patentably distinguish an invention over the prior art. The Examiner acknowledge that for

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anticipation, the prior art must disclose “each and every element” recited in the claims.

Applicant has not pointed out what claimed elements are not disclosed by Fleischauer, and thus the Examiner respectfully submits that Fleischauer discloses all of the elements of the claimed invention.

***Conclusion***

15. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Clark Dexter whose telephone number is (703) 308-1404. The examiner's typical work schedule is Tuesday through Friday, and he can be reached during normal business hours on these days.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Allan Shoap, can be reached at (703)308-1082.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703)308-1148. The fax numbers for this group are: formal papers - (703)305-3590; informal/draft papers - (703)305-9835.



**Clark F. Dexter  
Primary Examiner  
Art Unit 3724**

cfd

January 10, 2003